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First Dallas Media, Inc.
c/o Joseph C. Chautin, III, Esq.
Hardy, Carey, Chautin & Balkin, LLP
1080 West Causeway Approach
Mandeville, LA 70471
(sent by electronic email to: jchautin@hardycarey.com)

East Texas Community Broadcasting
3554 FM 747 S
Jacksonville, TX 75766
(sent by electronic email to: gwbetten@gmail.com)

Michelle Bradley
Founder, REC Networks
11541 Riverton Wharf Rd
Mardela Springs, MD 21837
(sent by electronic email to: lpfm@rechnet.com)

Albert Alan David
2632 Kenilworth Ave.
Berwyn, IL 60402
(sent by electronic email to: albert.a.david@hotmail.com)

In re: **NCE MX Group 205**

First Dallas Media, Inc.

New NCE (FM), Golinda, Texas

Facility ID No. 763726

Application File No. 0000165973

East Texas Community Broadcasting

New NCE (FM), Riesel, Texas

Facility ID No. 768280

Application File No. 0000167216

Informal Objection

Dear Applicants, Counsel, and Objectors:

We have before us two mutually exclusive (MX) applications filed by First Dallas Media, Inc. (FDMI) and East Texas Community Broadcasting (ETCB) for construction permits for new noncommercial educational (NCE) FM stations for different communities in Texas, which the Media Bureau (Bureau) designated as NCE MX Group 205.¹ The Bureau identified the FDMI Application as the tentative selectee of the group,² granted the unopposed FDMI Application, but subsequently rescinded the grant and directed FDMI and ETCB to file amendments to their respective applications.³ We also have before us an Informal Objection (REC Objection) filed by REC Networks.⁴ For the reasons set forth below, we dismiss the REC Objection and identify the ETCB Application as the new tentative selectee of NCE MX Group 205.

Background. The subject applications were filed during the November 2021 NCE FM filing window.⁵ In the *Fifth Fair Distribution Order*, the Bureau conducted a fair distribution analysis pursuant to section 307(b) of the Communications Act of 1934, as amended (Act), and determined that three applications in NCE MX Group 205—which consisted of a total of eight applications—were eligible for a fair distribution preference based on second NCE service population totals—the FDMI Application, the ETCB Application, and the Specialized Educational Broadcasting (SEB) Application. FDMI claimed it would provide a second NCE service to 14,178 people; SEB to 6,151 people; and ETCB a combined first and second NCE service to 8,575 people.⁶ Because FDMI’s proposal would provide a new second NCE service to at least 5,000 more people than ETCB’s next best proposal, the Bureau identified the FDMI Application as the tentative selectee of NCE MX Group 205.⁷ The Bureau established a 30-day period for

¹ *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Educational Stations; Opens Window to Accept Settlements and Technical Amendments*, Public Notice, 36 FCC Rcd 16452 (MB 2021); *see also* Application File Nos. 0000165973 (FDMI Application) and 0000167216 (ETCB Application). NCE MX Group 205 originally consisted of eight total applications, including the FDMI and ETCB Applications. *See infra* note 9.

² *Threshold Fair Distribution Analysis of 5 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, DA 22-1166, at 6, para. 12 (MB Nov. 9, 2022) (*Fifth Fair Distribution Order*).

³ *NCE MX Group 205*, Letter Order, DA 23-264, at 3 (MB Mar. 29, 2023) (*Letter Order*).

⁴ *See* Pleading File No. 0000213898 (filed Apr. 14, 2023). Albert A. David also filed two Informal Objections to the ETCB Application. *See* Pleading File No. 0000213747 (filed Apr. 12, 2023); Pleading File No. 0000214116 (filed Apr. 22, 2023) (David Objections). The Bureau will not consider petitions, comments, or objections against the tentative selectee until after the petition to deny period has run. *See Comparative Consideration of 32 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 22-78, at 20, para. 101 (Oct. 25, 2022) (emphasis added) (“We direct the Bureau staff, *once the petition to deny period has run*, to conduct a final study of each tentatively selected application in accordance with its routine processing procedures. The staff studies should consider any petitions, comments, and objections to determine whether there is any substantial and material question of fact concerning whether grant of the tentatively selected application would serve the public interest.”). Accordingly, we do not consider the David Objections herein, and each will remain in pending status until the petition to deny period has run.

⁵ *Media Bureau Announces NCE FM New Station Application Filing Window; Window Open from November 2, 2021, to November 9, 2021*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 7449 (MB 2021).

⁶ *See Fifth Fair Distribution Order* at 5, para. 12.

⁷ *Id.*

filing petitions to deny, and stated if no petitions were filed, it would grant the FDMI Application and dismiss the remaining applications, including the ETCB and SEB Applications.⁸ No petitions to deny were filed, and in the *Public Notice*, the Bureau granted the FDMI Application and dismissed the remaining applicants as non-tentative selectees.⁹

On December 19, 2022, ETCB filed a Petition for Reconsideration (First Petition), claiming that FDMI misrepresented the fair distribution population figures in the FDMI Application by excluding two stations from its fair distribution calculation.¹⁰ ETCB claimed that, when counting those two stations, FDMI would only provide new NCE service to 1,706 persons, and therefore, the FDMI Application did not meet the requirements to claim a fair distribution preference for second NCE service.¹¹ ETCB urged the Commission to rescind the grant of the FDMI Application and to grant the ETCB Application.¹² Additionally, on January 8, 2023, ETCB filed a second Petition for Reconsideration (Second Petition) seeking *nunc pro tunc* reinstatement of its dismissed application.¹³ ETCB also stated that its own application contained typographical errors in the directional antenna pattern, and that it included with the Second Petition an amendment correcting those errors.¹⁴ On March 29, 2023, the Bureau released the *Letter Order* in which it (1) granted the First Petition and rescinded the grant and tentative selection of the FDMI application; (2) granted the Second Petition and reinstated the ETCB Application; and (3) afforded FDMI and ETCB each 15 days in which to file amendments to their applications before further Bureau or Commission action.¹⁵

On April 5, 2023, ETCB filed an amendment to correct the errors in the directional antenna pattern, and on April 12, 2023, ETCB filed an amendment to downgrade its combined first and second NCE service from 8,575 to 8,474 people.¹⁶ On April 10, 2023, FDMI amended its Application to disclaim its eligibility for a fair distribution preference.¹⁷

The REC Objection argues that, based on the incorrect fair distribution population figures in the FDMI Application, the Commission should “completely reconsider the MX Group as a whole, including the reinstatement” of the SEB Application.¹⁸ REC notes that the SEC Application claimed a fair

⁸ *Id.* at 7, para. 21; *see also* Application File No. 0000166809 (SEB Application).

⁹ Six applicants, including SEB and ETCB, were dismissed as non-tentative selectees. *See Actions*, Public Notice, Report No. PN-2-221213-01 (MB Dec. 13, 2022) (*Public Notice*) (granting the FDMI Application and dismissing the mutually exclusive ETCB Application, SEB Application (Application File No. 0000166809), and the applications of Ministerio Espiritu Santo (Application File No. 0000167797), Iglesia Cristian Restauracion y Vida (Application File No. 0000167785), Alpha Consulting Christian Education (Application File No. 0000166689), and Centro Familiar de Restauracion y Vida (Application File No. 0000167080)). The eighth applicant, Red-C Apostolate: Religious Education for the Domestic Church (Application File No. 0000167206), filed an amendment after the issuance of the *Fifth Fair Distribution Order*, which rendered its application a singleton.

¹⁰ *See* Pleading File No. 0000205723 (filed Dec. 19, 2022).

¹¹ *Id.* at 4-5.

¹² *Id.* at 5.

¹³ *See* Pleading File No. 0000206492 (filed Jan. 8, 2023).

¹⁴ *Id.* at 4.

¹⁵ *Letter Order*, *supra* note 3, at 3.

¹⁶ ETCB Application.

¹⁷ FDMI Application.

¹⁸ REC Objection at 2.

distribution preference and, if the ETCB Application is not reinstated, the SEB Application should be granted instead of the FDMI Application, which does not claim such a preference.¹⁹

Discussion. Pursuant to section 309(d) of the Act,²⁰ petitions to deny and informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.²¹

Procedural. The REC Objection does not oppose the grant of the ETCB Application, but rather seeks the reinstatement of the dismissed SEB Application. We therefore treat it as a petition for reconsideration. Treated as a petition for reconsideration, we find the REC Objection deficient on procedural grounds and dismiss it. The Commission issued the *Public Notice* dismissing the remaining applications in NCE MX Group 205, including the SEB Application, on December 9, 2022,²² and the dismissals became final on January 22, 2023.²³ However, REC Network did not file the REC Objection until April 14, 2023. Accordingly, we dismiss the REC Objection as untimely. Further, the REC Objection is defective as a petition for reconsideration because REC Networks lacks standing to seek the reinstatement of the SEB Application.²⁴

Fair Distribution Analysis. Based on FDMI's and ETCB's amended applications, we conduct a new fair distribution analysis. FDMI does not claim a fair distribution preference. Because ETCB is the only applicant to claim a fair distribution preference, ETCB is the new tentative selectee in Group 205.

Conclusion/Actions. For the reasons set forth above, **IT IS ORDERED** that the Informal Objection filed by REC Networks, on April 14, 2023 (Pleading File No. 0000213898), treated as a petition for reconsideration, **IS DISMISSED**.

IT IS FURTHER ORDERED that the application filed by East Texas Community Broadcasting (Application File No. 0000167216) is **TENTATIVELY SELECTED** to be awarded a construction permit for a new NCE FM station in Riesel, Texas, and its application **IS ACCEPTED FOR FILING**,

¹⁹ *Id.* at 3.

²⁰ 47 U.S.C. § 309(d).

²¹ *See, e.g., WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197, n.10 (1990), *aff'd sub nom. Garden State Broad. L.P. v. FCC*, 996 F. 2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (petitions to deny and informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

²² *See Public Notice.*

²³ *See* 47 CFR § 1.106(f) (providing for 30 days after public notice of final Commission action for petitioners to file petitions for reconsideration); 47 CFR § 1.117(a) (providing for 40 days after public notice of the Bureau's decision for the Commission on its own motion to order the record before it for review). *See also* 47 CFR § 1.4(b)(4). Only ETCB sought reconsideration of the dismissal of its application.

²⁴ *See* REC Objection (recognizing that REC Networks lacks standing to file a petition to deny, and urging the Commission to consider the pleading as an informal objection pursuant to section 73.3587 of the Rules). In order to show standing to file a petition for reconsideration, a petitioner who is not a party to the proceeding must: (1) state with particularity the manner in which its interests are adversely affected by the action taken, and (2) show good reason why it was not possible to participate in the earlier stages of the proceeding. 47 CFR § 1.106(b)(1). REC Networks is not a party to the proceeding, and the REC Objection does not include any showing of how it is adversely affected by the action taken or any showing of good reason for its failure to participate previously. *See e.g., Kalamazoo Broadcasting Company, Inc.*, Letter Order, DA 23-280, at 2 (MB Apr. 3, 2023) (third-party lacks standing to seek reinstatement of a cancelled Commission authorization).

establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we intend, by public notice, **TO DISMISS** the mutually exclusive application of First Dallas Media, Inc. (Application File No. 0000165973), and **TO GRANT** the application of East Texas Community Broadcasting (Application File No. 0000167216) **CONDITIONED UPON** that selectee's compliance with section 73.7002(c) of the Commission's rules, 47 CFR § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau